

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SOLAE, LLC,)
vs.)
Plaintiff,)
vs.) Case No. 4:03CV00732 HEA
)
ARCHER DANIELS MIDLAND COMPANY)
and AMERIFIT NUTRITION, INC.)
Defendants.)
.....) JURY TRIAL DEMANDED

**PLAINTIFF'S REPLY TO ANSWER AND COUNTERCLAIMS
OF DEFENDANT AMERIFIT NUTRITION, INC.**

Plaintiff Solae, LLC ("Solae" or "Plaintiff"), by and through its attorneys, replies to Defendant, Amerifit Nutrition, Inc.'s, Answer and Counterclaims to Plaintiff's Complaint ("Amerifit's Answer"), as follows:

1. Paragraphs 1-29 of Amerifit's Answer are responses to the allegations in Solae's Complaint to which no response is necessary or appropriate.

Amerifit's Affirmative Defenses

Invalidity

2. Solae denies the allegations contained in paragraph 30 of Amerifit's Answer.
3. Solae denies the allegations contained in paragraph 31 of Amerifit's Answer.

Non-Infringement

4. Solae denies the allegations contained in paragraph 32 of Amerifit's Answer.

5. Solae denies the allegations contained in paragraph 33 of Amerifit's Answer.

Counter-Claim

Declaratory Judgment

6. Solae admits the allegations contained in paragraph 34 of Amerifit's Answer.
7. Solae does not have sufficient information to admit or deny the allegations contained in paragraph 35 of Amerifit's Answer.
8. Solae admits that paragraph 36 of Amerifit's Answer purports to state a counterclaim for a declaratory judgment of invalidity, unenforceability and non-infringement of U.S. Patent No. 5,990,291 ("the '291 patent") and U.S. Patent No. 6,562,380 ("the '380 patent") under the patent laws of the United States, Title 35 United States Code.
9. Solae admits the allegations contained in paragraph 37 of Amerifit's Answer.
10. Solae admits the allegations contained in paragraph 38 of Amerifit's Answer.
11. Solae admits the allegations contained in paragraph 39 of Amerifit's Answer.
12. Solae admits the allegations contained in paragraph 40 of Amerifit's Answer.

COUNT I - Invalidity of the '291 patent

13. Paragraph 41 of Amerifit's Answer realleges the allegations contained in paragraphs 34-40 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 34-40 in Amerifit's Answer, as set forth in paragraphs 6-12 above.

14. Solae denies the allegations contained in paragraph 42 of Amerifit's Answer.

COUNT II - Invalidity of the '380 patent

15. Paragraph 43 of Amerifit's Answer realleges the allegations contained in paragraphs 34-40 and 42 of Amerifit's Answer. In response, Solae realleges and incorporates by

reference its responses to paragraphs 34-40 and 42 in Amerifit's Answer, as set forth in paragraphs 6-12 and 14 above.

16. Solae denies the allegations contained in paragraph 44 of Amerifit's Answer.

COUNT III - Non-Infringement of the '291 patent

17. Paragraph 45 of Amerifit's Answer realleges the allegations contained in paragraphs 34-40, 42 and 44 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 34-40, 42 and 44 in Amerifit's Answer, as set forth in paragraphs 6-12, 14 and 16 above.

18. Solae denies the allegations contained in paragraph 46 of Amerifit's Answer.

COUNT IV - Non-Infringement of the '380 patent

19. Paragraph 47 of Amerifit's Answer realleges the allegations contained in paragraphs 34-40, 42, 44 and 46 of Amerifit's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 34-40, 42, 44 and 46 in Amerifit's Answer, as set forth in paragraphs 6-12, 14, 16 and 18 above.

20. Solae denies the allegations contained in paragraph 48 of Amerifit's Answer.

WHEREFORE, Plaintiff Solae requests judgment dismissing Defendant Amerifit's counterclaims in all respects, and for such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable in this action.

Respectfully Submitted,

LEWIS, RICE & FINGERSH, L.C.

Dated: April 21, 2004

By: /s/ C. David Goerisch

Andrew Rothschild, #4214

C. David Goerisch, #77207

Michael J. Hickey, #101931

500 North Broadway, Suite 2000

St. Louis, Missouri 63102

(314) 444-7600 – Telephone

(314) 241-6056 – Facsimile

E-mail: arothschild@lewisrice.com

dgoerisch@lewisrice.com

mhickey@lewisrice.com

Patricia A. Carson

Thomas F. Fleming

KAYE SCHOLER LLP

425 Park Avenue

New York, NY 10022

Telephone: (212) 836-8000

Facsimile: (212) 836-8689

E-mail: pcarson@kayescholer.com

tfleming@kayescholer.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of April, 2004, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following persons:

Stephen H. Rovak
Michael T. Marrah
Kirill Y. Abramov
Sonnenschein, Nath & Rosenthal LLP
One Metropolitan Square, Suite 3000
St. Louis, MO 63102

David K.S. Cornwell
Timothy J. Shea, Jr.
Donald R. Banowitz
Sterne, Kessler, Goldstein & Fox, P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005

/s/ C. David Goerisch